



# ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704  
HELENA, MONTANA 59620-1704  
(406) 444-3742

**GOVERNOR BRIAN SCHWEITZER**  
**DESIGNATED REPRESENTATIVE**  
MIKE VOLESKY

**HOUSE MEMBERS**  
DEBBY BARRETT  
NORMA BIXBY  
SUE DICKENSON  
CHRISTOPHER HARRIS  
WALTER MCNUTT  
JIM PETERSON

**SENATE MEMBERS**  
LANE LARSON  
GREG LIND  
DANIEL MCGEE  
JIM SHOCKLEY  
ROBERT STORY  
MICHAEL WHEAT

**PUBLIC MEMBERS**  
BRIAN CEBULL  
KRIS KOK  
BUZZ MATTELIN  
DOUGLAS MCRAE

**COUNCIL STAFF**  
KRISTA LEE EVANS, Research Analyst  
JOE KOLMAN, Research Analyst  
CYNTHIA PETERSON, Secretary  
TODD EVERTS, Legislative Environmental Analyst

## Memorandum

To: Environmental Quality Council Study Subcommittee

From: Krista Lee Evans, Research Analyst

RE: DNRC "revised funding formula" proposal in bill draft format

Date: February 24, 2006

At the January Subcommittee meeting you requested that I work with DNRC to develop their proposal regarding a new funding formula for administration and put that into a bill draft format so that it would be easier for you to understand what they were proposing.

Attached is a copy of this "account combo" bill (LC 7777) for your review. I have worked with DNRC to make sure that it reflects what they are proposing. I have identified a few issues that you might want to think about while you are considering this bill draft. These issues are identified below.

(1) Greg Petesch, Chief Legal Counsel, Legislative Services Division has stated numerous times that he believes that it is unconstitutional to use revenues from the public school trust to pay for administration. There are multiple trusts with multiple granting instruments that along with the Montana Constitution control whether or not it is appropriate to use revenues to fund administration. This bill draft does not address this issue and does not negate his concerns.

(2) Section 17-3-1003 states that "there is annually and perpetually appropriated . . . the income from all permanent endowments. . ." It appears that the intent is to make this a statutory appropriation. However, current practice requires that for this to truly be a statutory appropriation it must state "as provided in 17-7-502" and the statute (17-3-1003) must be listed in 17-7-502. This is more of a code cleanup and clarification suggestion.

(3) It is not clearly delineated in this bill draft, or in current statute for that matter, where the revenue received from the trusts (property) goes first. For example, assume there is a grazing lease that DNRC receives \$500 in lease payment. This grazing lease is on a parcel that is capitol building grant land. Does the \$500 go into the distributable account

for the capitol building grant and then 15% is paid back for expenses or does the \$500 go into the Trust Land Administration Account (TAC) 1st, 15% is deducted, and then the remainder goes into the distributable account for the capitol building grant?

DNRC plans to deposit revenues as they are received into the appropriate trust's investment account. Then, from that account 15%, or whatever percentage the legislature appropriated, would be sent back to the TAC account to pay for administration. Then, the funds would be distributed from the investment account into either the permanent fund or the distributable account for that particular trust depending on which activity generated the revenue.

The question is whether or not this process needs to be provided for in statute or is it better left to the department's discretion? One option would be to set up the various trusts similar to how the Treasure State Endowment program and others are set up within the coal trust with their permanent fund, then an income fund, and then an account that they can spend money from.

(4) Are the costs determined per trust? A new section -- subsection (5) in 77-1-108 speaks to how the costs will be apportioned -- to my knowledge this is the only place in statute (if this bill was passed) that addresses how the costs are allocated per trust. In a best case scenario costs would be tracked per trust and only the costs associated with activities conducted on or on behalf of that trust would be assessed against that trust's revenues - up to the maximum of 15% envisioned in this bill. This would conform to general trust principles and could help address the issues similar to the Morrill Act problem where the other trusts were bearing the cost of administration. The feasibility of tracking costs and to what detail would need to be discussed further. It is also important to recognize that the 15% figure works in the proposed bill - it might not work in this scenario so we would need to look at the numbers per trust to determine appropriate percentages.

(5) One alternative that staff has identified is to change from an "activity view" (timber harvest, recreational use, commercial lease, etc) to a "trust view". Ensure the department is keeping track of everything - both costs and revenues - on a per trust basis. This would potentially help make sure that revenues are exceeding costs on a per trust basis and it will also provide a more transparent process for the beneficiaries of each trust, the legislature, and citizens in general. One way of accomplish this (which is very similar to how DNRC manages the money right now - it would simply put it into statute) would be to:

- (a) establish an "income account" for each trust if one doesn't already exist; and
- (b) establish an "expense account" for each trust if one doesn't already exist.

Once these accounts are established make it clear that proceeds are initially deposited in the revenue account and expenses accrue in the expense account. DNRC "bills" the revenue account for the expenses that are in that trust's expense account. These expenses would be actual, not to exceed a maximum amount or 15% in the scenario in the bill draft. Once again, these numbers would need to be looked at in more detail to

make sure that on a direct expense to revenue calculation per trust the percentage is accurate. Once the administrative costs were deducted the funds could be deposited in the appropriate account or fund - either distributable for the trust or permanent fund for the trust based on how the funds were obtained.

(6) In this bill the "cap" is set at 15%. I would suggest that it would be a good idea to also include a "floor" in statute, 12% for example, to ensure that DNRC's fiduciary responsibilities to the trusts are not negatively affected by the lack of funding or inadequate funding.

(7) In the bill draft the term revenue has been defined in 77-1-108(1). This is important because the bill is saying that 15% of the gross revenue can be used for administration. You will see that in subsection (1)(c) it discusses "the proceeds from the sale or other disposition of interests in property". If it is a permanent disposition of property - as outlined in subsection (1)(c) - then the proceeds are required to go into the permanent fund for that trust. And for some trusts these permanent funds are inviolate and guaranteed against loss or diversion in the Montana Constitution. This subsection appears to be allowing the use of funds that should be deposited in the permanent fund for administrative purposes. I believe it is statutorily allowing a diversion, to pay for administrative costs, of permanent fund money. If the subcommittee decides to address this issue we would need to look at the numbers again to make sure they still work - the 15% was calculated using revenues from permanent disposition. If the permanent disposition revenues were not used the percentage would probably have to go up - maybe around 20%. In other words, 20% of distributable revenue would go to DNRC for administrative costs.

(8) There are multiple sections of law being repealed. I have included copies of all of those sections for your review. It appears that some of the sections that are being repealed are the sections of law that limited how the administrative funds can be used. I believe this is a policy choice regarding how many or what types of limits the legislature wants to place on the use of these funds.

If you have questions or comments please do not hesitate to contact me. My phone number is 444-1640 and my email is kevans@mt.gov.

## **Repealed Statutes**

**77-1-602. Definition of terms.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenue required by law to be placed in the permanent fund type and revenue from the sale of timber.

History: En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973; R.C.M. 1947, 81-2402; amd. Sec. 36, Ch. 281, L. 1983; amd. Sec. 5, Ch. 14, Sp. L. January 1992; amd. Sec. 31, Ch. 34, L. 2001.

**77-1-604. Resource development account.** A resource development account in the state special revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions, and objects for which the lands are held in trust. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973; R.C.M. 1947, 81-2403(part); amd. Sec. 1, Ch. 277, L. 1983.

**77-1-606. Restriction on use of income from school and institutional lands.** Money in the resource development account created in 77-1-604 that is derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands must be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred must be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973; R.C.M. 1947, 81-2404; amd. Sec. 2, Ch. 533, L. 1993.

**77-1-607. Deductions from income for development account -- maximum percentage.** (1) The board shall determine the amount or percentage of income, not to exceed 3%, that is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income that is secured from the lands by the department for the trusts benefited by this part.

(2) The maximum percentage limitation in subsection (1) does not apply to income deducted and expended under the provisions of 77-1-613.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973; R.C.M. 1947, 81-2405; amd. Sec. 3, Ch. 533, L. 1993; amd. Sec. 1, Ch. 247, L. 1997.

**77-1-608. Crediting of deductions.** All deductions from gross proceeds made in accordance with 77-1-607(1) must be paid into the account, and the balance of the proceeds must be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973; R.C.M. 1947, 81-2406; amd. Sec. 4, Ch. 533, L. 1993.

**77-1-609. Investment of moneys in development account.** The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973; R.C.M. 1947, 81-2407.

**77-1-613. Deduction of portion of income received from sale of timber from state trust lands -- creation of account.** (1) There is an account in the state special revenue fund called the state timber sale account. Money in the account may be appropriated by the legislature for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts. There must be placed in the account an amount from timber sales on state lands each fiscal year equal to the amount appropriated from the account for the corresponding fiscal year.

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs.

History: En. Sec. 1, Ch. 533, L. 1993; amd. Sec. 1, Ch. 157, L. 1995.

**77-1-808. (Temporary) State lands recreational use account.** (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by 77-1-802;

(b) 10% of the revenue received as a result of an agreement with the department of fish, wildlife, and parks for the use and impacts of hunting, fishing, and trapping as provided in 77-1-815; and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account must be used by the department for the following purposes:

(a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets;

- (d) administration and management for the implementation of recreational use of state lands; and
  - (e) maintenance of roads necessary for public recreational use of state trust land.
- (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

**77-1-808. (Effective on occurrence of contingency) State lands recreational use account.** (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by 77-1-802; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account must be used by the department for the following purposes:

(a) compensation pursuant to 77-1-809 for damage to the improvements of leases that has been proved to be caused by recreational users;

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets; and

(d) administration and management for the implementation of recreational use of state lands.

History: En. Sec. 16, Ch. 609, L. 1991; amd. Sec. 68, Ch. 509, L. 1995; amd. Sec. 1, Ch. 117, L. 2001; amd. Sec. 6, Ch. 596, L. 2003.

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act generally revising the laws governing the administration of state land; providing a new funding formula for administration of state lands; providing a maximum for appropriations from the trust land administration account; making it clear that the board of regents shall determine how timber proceeds from montana university system lands are distributed; providing for the deposit of not more than 15% of gross revenue generated annually across all land trusts, except Morrill Act lands, into the trust land administration account; eliminating the resource development account and associated requirements; eliminating the recreational use account and the requirement to withhold two dollars from each license fee for administration; eliminating the timber sale account; requiring the compensation for damages resulting from recreational use be paid out of the trust land administration account; requiring that weed management necessary due to recreational use on state lands be paid out of the trust land administration account; removing the requirement to retain ten percent of gross receipts from any agreement with the department of fish, wildlife, and parks regarding recreational use of state lands; removing the department's ability to retain ten percent of annual rent received from commercial leasing for administration; allowing for commercial lease administration expense to be paid from the trust

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

land administration account; eliminating the ability of the department to retain up to ten percent of proceeds in the state land bank fund for administration; allowing for the use of funds appropriated from the trust land administration account to be used for administration of the land banking program; amending sections 17-3-1003, 18-2-107, 20-9-620, 77-1-108, 77-1-109, 77-1-802, 77-1-809, 77-1-810, 77-1-815, 77-1-905, 77-2-328, and 77-2-362, MCA; repealing sections 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, 77-1-609, 77-1-613, and 77-1-808, MCA and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 17-3-1003, MCA, is amended to read:

**"17-3-1003. Support of state institutions.** (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under 77-1-109, ~~Title 77, chapter 1, part 6, and 77-2-362,~~ the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose, except revenue pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid to the state treasurer who shall deposit the money to the credit of the proper fund.

(2) Except as provided in subsections (1) and (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) Except as provided in 77-1-109 and subsection (4) of this section, all money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution.

(4) The board of regents shall designate, at least once per biennium, whether the timber sale proceeds from Montana university system lands must be distributable to the beneficiaries or placed in the permanent fund."

{ Internal References to 17-3-1003:  
17-3-1004x      77-1-109x }

**Section 2.** Section 18-2-107, MCA, is amended to read:

**"18-2-107. Deposit of capitol building grant revenue.** (1)  
The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109, ~~Title 77, chapter 1, part 6, and 77-2-362.~~

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act."

{Internal References to 18-2-107:  
18-2-101 x}

**Section 3.** Section 20-9-620, MCA, is amended to read:

**"20-9-620. Definition.** (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-343(4)(a)(ii) and ~~available on or after July 1, 2003, 77-1-607, and 77-1-613~~ 77-1-109, 95% of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized."

{Internal References to 20-9-620: None.}

**Section 4.** Section 77-1-108, MCA, is amended to read:

**"77-1-108. Trust land administration account.** (1) As used in 77-1-109 and this section, for all land trusts managed by the state board of land commissioners, except property held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 328, "revenue"

**Unofficial Draft Copy**

As of: February 27, 2006 (11:00am)

LC7777

includes:

(a) the interest and income received from the investment of the permanent funds;

(b) the income received from the leasing, licensing, or other use of lands; and

(c) the proceeds from the sale or other disposition of interests in property.

(2) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands.

~~(2)(3)~~ Appropriations from the account for each fiscal year may not exceed ~~the sum of 1 1/8% of the book value balance in the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10%~~ 15% of the ~~revenue deposited~~ gross revenue generated annually from the sum of all land trusts except revenue received from:

(a) property held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 328; and

(b) the forest improvement fee provided for in 77-5-204 in the capitol building land grant trust fund in the last-completed fiscal year prior to the new biennium.

~~(3)(4)~~ Unreserved Except as provided in 17-7-304, unreserved funds remaining in the account at the end of a fiscal year must be transferred to each of the permanent funds or distributable accounts in proportionate shares to each fund's

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

contribution to the account ~~as calculated in 77-1-109(3).~~

(5) The department's costs of administering state trust lands must be reasonably and equitably apportioned to the various land trusts based on the department's activities and revenues generated from each land trust."

{ Internal References to 77-1-108:

77-1-109 x      77-1-109x      77-2-328 x  
}

**Section 5.** Section 77-1-109, MCA, is amended to read:

**"77-1-109. Deposits of proceeds in trust land administration account.** (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to 77-1-108, deposit into the trust land administration account created by 77-1-108 the following:

- ~~(a) mineral royalties;~~
- ~~—— (b) the proceeds or income from the sale of easements and timber, except timber from public school and Montana university system lands;~~
- ~~—— (c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341;~~

(a) not more than 15% of the annual gross revenue; and

~~(d)~~ (b) fees collected pursuant to 77-2-328.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds, other than proceeds from public school lands, timber from Montana university system lands, and other than those purchased pursuant to 17-6-340, must be deposited in the appropriate permanent fund and the capitol

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

building land grant trust fund. Timber proceeds from university system lands must be paid over to the state treasurer, who shall deposit the money to the credit of the proper fund for use as provided in 17-3-1003(1). Royalty payments purchased pursuant to 17-6-340 must be used as provided in that section and 20-9-622.

~~(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine permanent funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund."~~

{ Internal References to 77-1-109:

17-3-1003?	17-3-1003?	18-2-107x	20-9-341x
20-9-601x	20-9-601x	20-25-422x	77-1-108x }

**Section 6.** Section 77-1-802, MCA, is amended to read:

**"77-1-802. (Temporary) Recreational use -- fee.** (1) The fee for recreational use on state trust land must attain full market value whether the license is sold on an individual basis or on a group basis through an agreement with the department of fish, wildlife, and parks as provided in 77-1-815.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(b) ~~Two dollars from the fee for each license, less 50~~

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

~~Fifty cents from the fee for each license to must be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.~~

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)

## **77-1-802. (Effective on occurrence of contingency)**

**Recreational use license -- fee.** (1) The fee for a recreational use license must attain full market value.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

(b) ~~Two dollars from the fee for each license, less 50~~  
~~Fifty cents from the fee for each license to must be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.~~

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish,

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9."

{ Internal References to 77-1-802:

70-16-302x	70-16-302x	77-1-106x	77-1-106x
77-1-106x	77-1-106x	77-1-801x	77-1-801x
77-1-808x	77-1-808x	77-1-815x }	

**Section 7.** Section 77-1-809, MCA, is amended to read:

**"77-1-809. Compensation for damage to improvements, growing crops, or livestock.** A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from appropriations from the ~~state lands recreational use~~ trust land administration account established by ~~77-1-808~~ 77-1-108, and the liability of the department for damage payments is limited to the available appropriation. Claim applications are to be considered in the order they are received."

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

{Internal References to 77-1-809:  
77-1-808 x        77-1-808 x}

**Section 8.** Section 77-1-810, MCA, is amended to read:

**"77-1-810. Weed control management.** (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from appropriations from the ~~state lands recreational use~~ trust land administration account ~~pursuant to 77-1-808~~ as provided in 77-1-108."

{Internal References to 77-1-810: None.}

**Section 9.** Section 77-1-815, MCA, is amended to read:

**"77-1-815. (Temporary) Recreational use agreement for hunting, fishing, and trapping on legally accessible state trust land.** (1) The board is authorized to enter into an agreement with the department of fish, wildlife, and parks to compensate state trust land beneficiaries for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land as defined in department rule. The department may impose restrictions it considers necessary to coordinate the uses of state trust land or to preserve the purposes of the various trust

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

lands. Hunting, fishing, and trapping on state trust land must be conducted in accordance with rules and provisions provided in this part.

(2) An agreement may be issued to the department of fish, wildlife, and parks for a term of up to 10 years. Through this agreement, the board shall recover for the beneficiaries of the trust the full market value for the use and impacts associated with hunting, fishing, and trapping on legally accessible state trust land. ~~Ten percent of the gross receipts from the agreement must be deposited in the state lands recreational use account established in 77-1-808. The remaining 90%~~ The department may use funds appropriated from the trust land administration account provided for in 77-1-108 to implement and manage the agreement. Except as provided in 17-7-304, any unexpended amount in the account established by 77-1-108 that resulted from recreational use must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage of acreage in the total acreage of all state land trusts.

(3) Any agreement entered into is subject to the following conditions:

(a) The department maintains sole discretion, throughout the term of the agreement, with regard to identifying legally accessible parcels, coordinating uses on state trust land, and any other necessary state trust land management decisions.

(b) An agreement between the department and the department of fish, wildlife, and parks may not convey any additional authority to the department of fish, wildlife, and parks.

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

(4) During any period that the department of fish, wildlife, and parks and the department have reached an agreement as provided in subsection (1), an individual recreational use license under 77-1-801 or 77-1-802 may not be required for a member of the public to hunt, fish, or trap upon legally accessible state trust land. (Void on occurrence of contingency--sec. 8, Ch. 596, L. 2003.)"

{Internal References to 77-1-815:

70-16-302 x	77-1-106x	77-1-106x	77-1-801x
77-1-802x	77-1-808x	}	

**Section 10.** Section 77-1-905, MCA, is amended to read:

**"77-1-905. Rental provisions for commercial leasing -- payments and credits -- administration -- lease options.** (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to pay the first year's rental at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The board shall specify in any commercial lease an

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

annual rental equal to the full market rental value of the land. The annual rent may not be less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rent provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rent due for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market value of the rent calculated to be owed on any commercial lease. A lease issued under this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) The department may use ~~up to 10% of the annual rent received from a commercial lease~~ funds appropriated from the trust land administration account as provided in 77-1-108 to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not exceed a term of 2 years. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future."

{Internal References to 77-1-905: None.}

**Section 11.** Section 77-2-328, MCA, is amended to read:

**"77-2-328. Additional rules -- deposit of fees.** The board may prescribe any additional rules for the conduct of sales of state land as in its judgment the interests of the state may demand. Any fees collected by a rule adopted pursuant to this section must be deposited in the trust land administration account as provided in ~~77-1-108~~ 77-1-109."

{Internal References to 77-2-328:  
77-1-109 x}

**Section 12.** Section 77-2-362, MCA, is amended to read:

**"77-2-362. State land bank fund -- statutory appropriation -- rules.** (1) There is a state land bank fund. The proceeds from the sale of state trust land authorized by 77-2-361 through 77-2-367 must be deposited into the state land bank fund. The

purpose of the state land bank fund is to temporarily hold proceeds from the sale of trust land pending the purchase of other land, easements, or improvements for the benefit of the beneficiaries of the respective trusts. A separate record of the proceeds received from the sale of trust land for each of the respective trusts must be maintained. Proceeds from the sale of lands that are part of a trust land grant may be used only to purchase land for the same trust.

(2) (a) Proceeds deposited in the state land bank fund, except earnings on those proceeds, are statutorily appropriated, as provided in 17-7-502, to the department for the purposes described in 77-2-361 through 77-2-367. All earnings on the proceeds deposited in the state land bank fund are subject to the provisions of Article X, sections 5 and 10, of the Montana constitution.

(b) Except as provided in subsection (2)(c), ~~up to 10% of the proceeds in the state land bank fund~~ funds appropriated from the trust land administration account provided for in 77-1-108 may be used by the department to fund the transactional costs of buying, selling, appraising, or marketing real property. Transactional costs may include realtor's fees, title reports, title insurance, legal fees, and other costs that may be necessary to complete a conveyance of real property.

(c) Proceeds from the sale of lands held pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 328, may not be used for any transactional costs or trust administration purposes for those

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

lands.

(d) The department may hold proceeds from the sale of state land in the state land bank fund for a period not to exceed 10 years after the effective date of each sale. If, by the end of the 10th year, the proceeds from the subject land sale have not been encumbered to purchase other lands, easements, or improvements within the state, the proceeds from that sale must be deposited in the public school fund or in the permanent fund of the respective trust as required by law, along with any earnings on the proceeds from the land sale, unless the time period is extended by the legislature.

(3) The board shall adopt rules providing for the implementation and administration of the state land bank fund, purchases, and sales."

{Internal References to 77-2-362:

7-22-2154* x	17-3-1003 x	17-7-502x	18-2-107x
77-2-337 x	77-2-337x	77-2-337x	77-2-337*x
77-2-337x	77-2-337*x	77-2-361*x	77-2-362*x
77-2-362*x	77-2-364*x	77-2-364*x	77-2-365*x
77-2-366 x	77-2-366* x}		

NEW SECTION. **Section 13. {standard} Repealer.** Sections 77-1-602, 77-1-604, 77-1-606, 77-1-607, 77-1-608, 77-1-609, 77-1-613, and 77-1-808, MCA, are repealed.

{Internal References to 77-1-602: None.

Internal References to 77-1-604: 77-1-606 r

Internal References to 77-1-606: None.

Internal References to 77-1-607: 20-9-620 x 77-1-608r

Internal References to 77-1-608: None.

Internal References to 77-1-609: None.

Internal References to 77-1-613: 20-9-620 x 77-1-607r

Internal References to 77-1-808: 77-1-802x 77-1-802x 77-1-809 x

77-1-810 x

77-1-815 x}

# Unofficial Draft Copy

As of: February 27, 2006 (11:00am)

LC7777

NEW SECTION.    **Section 14.**    {standard} **Effective date.** [This  
act] is effective on July 1, 2007.

- END -

{Name :        Krista Lee Evans  
Title :        Resource Policy Analyst  
Agency:       Legislative Environmental Policy Office  
Phone :        444-1640  
E-Mail:        kevans@mt.gov}